HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 287 (M/S) of 2004

Ram Lal
S/o Late Sri Uttam Chand
R/o 110 Ashutesh Nagar Rishikesh
District-Dehradun. …..Petitioner

Vs

State of Uttaranchal and others …Respondents

Counsel for the petitioner Sh. Jitendra Chaudhary
Standing Counsel for the respondent.

Dated: 16.4.2004

Hon'ble Rajesh Tandon, J.

Heard Sh. Jitendra Chaudhary learned counsel for the petitioner and Standing counsel for the respondent.

By the present writ petition the petitioner has prayed for the issue of a writ order or direction in the nature of mandamus directing the Respondent No. 2 i.e civil Judge Senior Division Dehradun to decide the application for temporary injunction as well as suit no. 349 of 2002 filed by respondent no.3 within a reasonable time.

Brief facts giving rise to the present writ petition are that there is a land bearing municipal No.110 situated in Rishikesh District Dehradun.

According to the petitioner the father of the petitioner namely Sri Uttam Chand and respondent No. 3 on 2-5-1983 by way of three

sale deeds purchased the land in dispute, one sale deed was in favour of Sri Uttam Chand, second in favour of the petitioner and third in favour of Respondent no.6. According to the petitioner after purchasing the land a family settlement had taken place between the parties. Copy of the plaint shows that the suit was filed by respondent no.3 namely Tirath Ram (Plaintiff) against Mrs. Ravel Kaur, Sh. Parash Ram and Indra Raj for cancellation of sale deed dt. 13-11-95. One of the defendant has filed the present writ petition for expeditious disposal of the suit as well the injunction application. The petitioner has submitted that he has already filed objections on 20-5-2003. A perusal of the order sheet shows for the following effect:-

50C 2 एतराज और 51 C 2 शपथ पत्र O.P. NO. 3 द्वारा पेष किया गयां। वादी द्वारा रिजावाइन्डर हेतु समय चाहा गया, आदेष हुआ कि k.O.F

52C 1 फेरिस्त द्वारा O.P. No. 3 ने चार कागजात दाखिल कियें। ओदष हुआ कि K.O.F.

According to the petitioner the objections have been field on the injunction application and since then the same has not been disposed of and the injunction order dt. 5-5-2003 is still continuing. The same is quoted below:-

"Put up on the date fixed for objection and disposal till then defendant no. 3 is restrained from selling or transferring the disputed property as shown in list A of the plaint."

Order 39 rule 1 of the code of civil procedure reads as under:-

"Cases in which temporary injunction may be granted.- Where in any suit it is proved by affidavit or otherwise;-

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to [defrauding] his creditors.

(c) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.] the court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until the disposal of the suit or until further orders.

Since the petitioner has already filed the objections on the injunction application, it will be open for the presiding officer to dispose of the injunction matter under order 39 Rule 1.

Liberty is given to the petitioner to approach the respondent either to get the objections disposed of or to get the injunction order vacated. It such an application is filed for disposal, the presiding officer shall dispose of the same within a period of 6 weeks from the filing of the certified copy of the order.

Petitioner is also permitted to approach the Presiding Officer for disposal of the suit; Presiding Officer after considering the pendency of the suits of the relevant year shall pass appropriate orders expediting the suit.

Subject to the aforesaid observation, the writ petition is disposed of. There will be no order as to costs.

(Rajesh Tandon J.)

Dated:-16.04.2004

M.K